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MOTION FILED
AUG 8 . 2006

IN THE SUPREME COURT OF THE UNITED STATES

No. 05-705

GLOBAL CROSSING TELECOMMUNICATIONS, INC., PETITIONER

v.

METROPHONES TELECOMMUNICATIONS, INC.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION OF THE UNITED STATES AS AMICUS CURIAE FOR DIVIDED ARGUMENT AND TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting respondent and that the United States be allowed ten minutes of argument time. Respondent has agreed to cede ten minutes of argument time to the United States. Granting this motion therefore would not require the Court to enlarge the overall time for argument.

Under rules promulgated by the Federal Communications Commission, an interexchange carrier (IXC) must pay a payphone service provider (PSP) for each completed "dial-around" call made to the IXC's long-distance access lines using the PSP's payphones.

This case presents the question whether an IXC's failure to pay compensation to the PSP as required by the Commission's rules is an "unjust or unreasonable" practice in violation of 47 U.S.C. 201(b), and thus is actionable under Sections 206 and 207 of the Communications Act, 47 U.S.C. 206 and 207, which create a private cause of action for any violation of the Act.

Congress has directed the Commission to "take all actions necessary to prescribe regulations that * * * ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. 276(b)(1)(A). In the course of prescribing such regulations, the Commission determined that an IXC's failure to pay the required compensation violates Section 201(b), and that conclusion was a premise of the Commission's reasoning in selecting the appropriate rules under Section 276(b)(1)(A) to ensure that PSPs are compensated. See Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996, 18 F.C.C.R. 19,975, 19,990 ¶ 32 (2003). Accordingly, the validity of the Commission's specific determination that a failure to pay compensation violates Section 201(b), as well as a key premise of the compensation rules that the Commission has put into place under Section 276(b)(1)(A), is directly at issue in this case. More generally, the government has a strong interest in the construction of the substantive and remedial provisions of the Communications Act at issue in this case.

The United States has filed a brief as amicus curiae supporting respondent in this case, and the FCC participated as amicus curiae in the court of appeals in this case, as well as in the D.C. Circuit case with which it conflicts, APCC Servs., Inc. v. Sprint Commc'ns Co., 418 F.3d 1238 (D.C. Cir. 2005), petition for cert. pending, No. 05-766 (filed Dec. 12, 2005). We believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
Counsel of Record

AUGUST 2006